

Chad M. Knight
Anthony M. Nicastro
Nadia H. Patrick
KNIGHT NICASTRO MACKAY, LLC
304 W. 10th Street
Kansas City, MO 64105
Email: knight@knightnicastro.com
nicastro@knightnicastro.com
npatrick@knightnicastro.com
Telephone: (720) 770-6235
Facsimile: (816) 396-6233
ATTORNEYS FOR DEFENDANT
BNSF RAILWAY COMPANY

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

JACKSON WELLS, as Personal
Representative for the Estate of
THOMAS E. WELLS, deceased;
and JUDITH HEMPHILL, as
Personal Representative for the
Estate of JOYCE H. WALDER,
deceased,

Plaintiffs,

vs.

BNSF RAILWAY COMPANY, a
Delaware corporation; ROBINSON
INSULATION COMPANY, a
Montana Corporation for profit;
GROGAN ROBINSON LUMBER
COMPANY, a Montana
Corporation for profit; and DOES
A-Z,

Defendants.

Case No.: 4:21-cv-00097-BMM

**DECLARATION OF NADIA
H. PATRICK IN SUPPORT
OF DEFENDANT BNSF
RAILWAY COMPANY'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT –
STRICT LIABILITY**

I, Nadia H. Patrick, declare:

1. I am an attorney representing Defendant BNSF Railway Company in this matter. If called as a witness, I would and could competently testify on my own personal knowledge of the information set forth below.

2. Attached hereto are true and correct copies of the documents designated Exhibits A through V:

- A. Montana State Department of Health Memo regarding “Trip Report-Libby (W.R. Grace, Co.)-Feb. 4-8, 1974”, dated February 11, 1974.
- B. Affidavit of James Roberts dated February 8, 2007, *In Re: W.R. Grace & Co. et al.*, Chapter 11, Case No. 01-1139, in the United States Bankruptcy Court for the District of Delaware.
- C. Deposition transcript of Julie Hart, Ph.D., CIH, dated November 18, 2022, attached in relevant part.
- D. Deposition transcript of John Swing dated September 14, 2016, in *Kelly G. Watson v. BNSF Railway Company, et al.*, Cause No. ADV-10-0740, in the Montana Eighth Judicial District, Cascade County, attached in relevant part.
- E. U.S. Army Corps of Engineers Omaha District, Final Feasibility Study Report, dated May, 2015, Figures 2-19 and 2-20.
- F. Final Remedial Action Report Operable Unit 6, May 11, 2021.
- G. Analysis of Vermiculite for Asbestos and Screening for Vermiculite from Libby, Montana, *The Microscope*, Vol. 63.2, pp. 59-75, 2015, by James R. Millette, Ph.D., D-IBFES and Steven Compton, Ph.D., attached in relevant part.
- H. Fact Packet, The Vermiculite-Asbestos Connection, May 1983, attached in relevant part.

- I. Libby Vermiculite Exposure and Risk of Developing Asbestos-Related Lung and Pleural Disease, *Curr Opin Pulm Med.* 2012 Mar; 18(2): 161-167, by Vinicius C. Antao, Theodore C. Larson and D. Kevin Horton.
- J. Agency for Toxic Substances and Disease Registry, Vermiculite Consumer Products, May, 2003.
- K. Deposition transcript of Bruce Carrier dated June 28, 2016, in *Kelly G. Watson v. BNSF Railway Company, et al.*, Cause No. ADV-10-0740, in the Montana Eighth Judicial District, Cascade County, attached in relevant part.
- L. Expert Witness Report by Julie Hart, Ph.D., CIH dated August 16, 2022, attached in relevant part.
- M. Deposition transcript of Donald Newland dated December 22, 2021, in *Donald Newland v. BNSF Railway Company*, Cause No. DV-18-1081, in the Montana Thirteenth Judicial District, Yellowstone County, attached in relevant part.
- N. Deposition transcript of Mitchell Cuffe dated March 28, 2018, in *Brent Wetsch v. BNSF Railway Company*, Cause No. CDV-01-413, in the Montana Fourth Judicial District, Missoula County, attached in relevant part.
- O. Deposition transcript of Loren Brown dated July 20, 2006, in *Loren Brown v. BNSF Railway Company, et al.*, Cause No. ADV-10-0740, in the Montana Eighth Judicial District, Cascade County, attached in relevant part.
- P. Deposition transcript of Doug Hale dated August 31, 2006, in *Doug Hale, et al. v. State of Montana, et al.*, Cause No. BDV-05-844, in the Montana Eighth Judicial District, Cascade County, attached in relevant part.
- Q. Deposition transcript of Robert Fauske dated February 8, 2022, in *Donald Newland v. BNSF Railway Company*, Cause No. DV-18-1081, in the Montana Thirteenth Judicial District, Yellowstone County, attached in relevant part.
- R. Asbestos Air Sample Results, Libby, Montana, collected April-May, 2001.

- S. Trial transcript of Don Cleveland dated June 6, 2018, in *Brent Wetsch v. BNSF Railway Company*, Cause No. DV-16-1146, in the Montana Fourth Judicial District, Missoula County, attached in relevant part.
- T. Personal Air Sampling Results, Libby, MT, 2003-2011.
- U. Order re: Plaintiffs' Motion for Partial Summary Judgment re: Preemption and Abnormally Dangerous Activity and Defendant BNSF's Combined Motion for Summary Judgment on Duty, Strict Liability and Preemption/Preclusion dated January 15, 2019, filed In Re Asbestos Litigation, Cause No. AC-17-0694, In the Asbestos Claims Court of the State of Montana.
- V. Plaintiff's Response to Defendants' Motion for Partial Summary Judgment re: Strict Liability for Other Activities dated January 21, 2021, filed in *Tracie Barnes v. BNSF Railway Company, et al.*, Cause No. DV-15-2016-00111-AE, In the Asbestos Claims Court of the State of Montana.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 27th day of March, 2023.

KNIGHT NICASTRO MACKAY, LLC

By: _____
Nadia H. Patrick

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of March, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

Roger Sullivan
Jinnifer Jeresek Mariman
Ethan Welder
McGARVEY LAW
345 First Avenue East
Kalispell, MT 59901
rsullivan@mcgarveylaw.com
jmariman@mcgarveylaw.com
ewelder@mcgarveylaw.com

Alexandra Bailey Abston (PHV)
Rachel Lanier (PHV)
Sam Taylor, II (PHV)
LANIER LAW FIRM, P.C.
10940 W. Sam Houston Parkway N.
Suite 100
Houston, TX 77064
Alex.abston@lanierlawfirm.com
Rachel.lanier@lanierlawfirm.com
Sam.taylor@lanierlawfirm.com
Attorneys for Plaintiffs

KNIGHT NICASTRO MACKAY, LLC

By: /s/ Chad M. Knight
Chad M. Knight
Attorneys for Defendant
BNSF Railway Company